

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5757 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJ RAJYA ARDHSARKARI AUDYOGIKKARMACHARI SANGH

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/10/1999

ORAL JUDGEMENT

In the present petition, the petitioner union has
prayed for the following reliefs in paragraph 7(a) of the
petition:

"be pleased to issue an order, writ or direction

in the nature of mandamus and/or certiorari or any other appropriate writ or direction directing the respondents to treat all the daily wage employees of their department as regular employees from their initial dates of appointment and further direct to grant all the benefits available to regular Cl. IV employees of the respondents."

This petition was admitted by this Court on 3.12.1988 and ad interim relief against termination which was granted earlier was ordered to continue till further orders with the clarification that it will be open to terminate the service on any lawful ground in accordance with law. The respondents have filed affidavit in reply dated 7th October, 1999 along with certain details and also further affidavit by the petitioner against the affidavit in reply filed by the respondents.

According to the case of the petitioner, the workmen whose name and details have been given in annexure "K" are entitled to regularization and salary and other benefits being permanent employees of the respondents on the basis of the Government Resolution. The respondents have, along with their affidavit in reply, produced certain papers vide page 29 and 30. On the said two pages, the respondents have given details of the concerned workmen as per which, all the workmen have been given the benefits of the Government Resolution dated 17th October, 1988 by the respondent and all the workmen were given the pay scale of Cl. IV category. These facts which have been mentioned in page 29 and 30 by the respondents have not been disputed by the advocate for the petitioner. However, it has been contended by the learned advocate for the petitioner that according to the Government Resolution dated 17th October, 1988, once the benefits have been extended to the workmen while regularising their services and extending benefit of regular pay scale, then, these workmen must be ceased to be the daily rated employee and all are required to be considered as regular employees of the respondents and they should be given all the benefits which are being given to the permanent employees of the respondents. Said submission has been objected by the learned advocate Shri Patel who is appearing for the respondents.

I have considered the submissions of both the

sides. I am of the opinion that the services of the concerned daily rated employees has been regularized according to the Government resolution and the benefits have been extended to such workmen and also the services have also been considered as pensionable by the respondents, then, they cannot be considered daily rated regular employee. I am of the opinion that such label itself is contrary to the Government Resolution dated 17th October, 1988 which, in terms, provide that the daily rated employees who have completed services of more than 10 years will be treated as permanent employees and such permanent workmen will be entitled to monthly basic pay in the pay scale of Rs. 750-950 plus DA, HRA, City Compensatory Allowance etc. They will also be entitled to other benefits like pension, gratuity, provident fund etc. as per the rules and regulations in force. Besides, they will be entitled to 14 days' casual leave, per year, EL of 30 days, medical leave of 20 days, leave on all Sundays and public holidays etc. Each of the workmen who have performed the service of more than ten years should be given the status of permanency and the workmen who have completed fifteen years should be given one increment, those who have completed twenty years should be given two increments and those who have completed the service of more than 25 years should be given three increments in the pay scale of Rs. 750-940. The petitioner has relied on the decision in case of Chief Conservator of Forests and Anr. versus Jagannath Maruti Kondhare and Ors. reported in (1996) 2 SCC 293. The above resolutions dated 17th October, 1988 and 1st October, 1988 were based on 2(p) Settlement under the provisions of the Industrial Disputes Act, 1947. In view of this circular dated 1.10.1988, which was based on the settlement wherein all the deputy secretaries of the concerned department had appeared, negotiated and participated and have also signed the very settlement, subsequently the Government has issued the resolution dated 17.10.1988 and, therefore, in view of the resolution dated 1.10.1988 and the subsequent resolution dated 17.10.1988 and considering page 29 and 30 wherein the benefits have been given accordingly to all the concerned workmen, I am of the opinion that the concerned workmen at page 14 are regular employee, permanent employees of the respondents and all these employees are entitled to all the benefits as a permanent employees of the respondents and, therefore, said petition is required to be allowed. Accordingly, I pass the following order.

This petition is allowed. The respondents are directed to treat all the workmen whose names are mentioned in annexure "A" to this petition as also whose

names are mentioned in page 29 and 30 to the affidavit in reply filed by the respondent as permanent employees and to treat them at par with the other regular employees and to grant all the benefits as such. Rule is made absolute accordingly. There shall be no order as to costs.

23.10.1999. (H.K.Rathod,J.)